

FILED
U.S. DISTRICT COURT
DIV.
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

CLERK

SO. DIST. OF GA.

TYRONE E. BROWN,

Plaintiff,

v.

CIVIL ACTION NO.: CV511-017

RANDY F. ROYAL; Nurse TERRY;
Head Nurse BENNETT; CARL
JAMES; Captain JIM STAPLETON;
and Lt. HUBERT RYALS,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, an inmate presently confined at the Ware County Jail in Waycross, Georgia, filed an action pursuant to 42 U.S.C. § 1983. On March 21, 2011, Plaintiff was ordered to identify which claim or related claims he wished to pursue. On March, 25, 2011, Plaintiff responded to that Order.

An inmate proceeding in a civil action against officers or employees of government entities must comply with the mandates of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A. In determining compliance, the court shall be guided by the longstanding principle that *pro se* pleadings are entitled to liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972); Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988).

28 U.S.C. § 1915A requires a district court to screen the complaint for cognizable claims before or as soon as possible after docketing. The court must dismiss the

complaint or any portion of the complaint that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C.A. § 1915A(b)(1) and (2).

In Mitchell v. Farcass, 112 F. 3d 1483, 1490 (11th Cir. 1997), the Eleventh Circuit interpreted the language contained in 28 U.S.C. § 1915(e)(2)(B)(ii), which is nearly identical to that contained in the screening provisions at § 1915A(b). As the language of § 1915(e)(2)(B)(ii) closely tracks the language of Federal Rule of Civil Procedure 12(b)(6), the court held that the same standards for determining whether to dismiss for failure to state a claim under Rule 12(b)(6) should be applied to prisoner complaints filed pursuant to § 1915(e)(2)(B)(ii). Mitchell, 112 F. 3d at 1490. The Court may dismiss a complaint for failure to state a claim only where it appears beyond a doubt that a *pro se* litigant can prove no set of facts that would entitle him to relief. Hughes v. Rowe, 449 U.S. 5, 10 (1980); Mitchell, 112 F. 3d at 1490. While the court in Mitchell interpreted § 1915(e), its interpretation guides this Court in applying the identical language of § 1915A.

Plaintiff states he and other inmates are not receiving proper medical or dental care. Plaintiff states there is no adequate health screening at intake and prisoners are not receiving routine physical exams.

The Eighth Amendment's proscription against cruel and unusual punishment imposes a constitutional duty upon prison officials to take reasonable measures to guarantee the safety of prison inmates. This duty to safeguard also embodies the principle expressed by the Supreme Court in Estelle v. Gamble, 429 U.S. 97, 104 (1976), forbidding prison officials from "acting or failing to act with deliberate indifference

to a substantial risk of serious harm to a prisoner.” Farmer, 511 U.S. at 836. “[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id. at 837. Plaintiff has made no showing that Defendants knew of and disregarded an excessive risk to Plaintiff’s health and safety. Even taken as entirely true, Plaintiff’s allegations fail to rise to the level of deliberate indifference necessary to establish a violation of Defendant’s Eighth Amendment right to be free from cruel and unusual punishment.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Plaintiff’s complaint be **DISMISSED** for failing to state a claim upon which relief can be granted.

SO REPORTED and **RECOMMENDED**, this 31st day of March, 2011.


JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE